

NOV 14 2007

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Attorneys for Defendant, Cross-Claimant and  
Counterclaimant S.J. GARGRAVE SYNDICATE 2724

**IN THE DISTRICT COURT OF GUAM**

**TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INCHCAPE SHIPPING SERVICES GUAM,  
LLC,

Plaintiff in Intervention,

vs.

MARWAN SHIPPING & TRADING CO.,  
FIVE SEAS SHIPPING CO., LLC, and S.J.  
GARGRAVE SYNDICATE 2724, *in*  
*personam*,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIM,  
AND CLAIM IN INTERVENTION

Case No.: 1:06-CV-00011

**CERTIFICATE OF FORREST BOOTH  
IN SUPPORT OF EX PARTE  
APPLICATION FOR ORDER TO  
SHORTEN TIME ON S.J.  
GARGRAVE'S MOTION FOR LEAVE  
TO FILE THIRD-PARTY COMPLAINT  
AGAINST NAVIGATORS  
PROTECTION & INDEMNITY**

Complaint Date: April 19, 2006  
Trial Date: May 12, 2008

1 S.J. GARGRAVE SYNDICATE 2724,

2 Third-Party Plaintiff,

3 vs.

4 NAVIGATORS PROTECTION &  
5 INDEMNITY,

6 Third-Party Defendant.  
7

8  
9 I, Forrest Booth, certify as follows:

10 1. I am an attorney duly licensed to practice law before all courts in the State of  
11 California, and am admitted *pro hac vice* herein. I am a member of the law firm of Severson &  
12 Werson, counsel of record for Defendant, Cross-Claimant and Counterclaimant S.J. GARGRAVE  
13 SYNDICATE 2724 (hereinafter "Gargrave").

14 2. I have personal knowledge of the facts stated in this Declaration, and if called as a  
15 witness to testify as to them, I can and will competently do so.

16 3. On July 24, 2006, I filed a Third-Party Complaint herein, on behalf of Gargrave,  
17 against NAVIGATORS PROTECTION & INDEMNITY ("Navigators") and AL-BUHAIRA  
18 NATIONAL INSURANCE COMPANY ("Al-Buhaira"). Said Third-Party Complaint alleged  
19 that Navigators had misrepresented material facts, and failed to disclose other material facts,  
20 during the application for the Certificate of Financial Responsibility ("COFR") and policy of  
21 pollution insurance underwritten for the M/V AJMAN 2 by Gargrave. Discovery later disclosed  
22 that these were not viable claims against Navigators.

23 4. Accordingly, a dismissal dated January 31, 2007 was filed on February 1, 2007,  
24 dismissing Navigators, without prejudice, from this litigation.

25 5. Navigators remains a party in the closely related action entitled *Jose D. Leon*  
26 *Guerrero Commercial Port and M.J. Harrington Syndicate 2000 v. Marwan Shipping & Trading*  
27 *Company, LLC, Sharjah, et al.*, Civil Action Case No. 07-00010 in this Court ("Port's lawsuit").  
28

1           6.       I am counsel for plaintiff M.J. HARRINGTON SYNDICATE 2000 (hereinafter  
2 "Harrington") in the Port's lawsuit. As a result, I am familiar with the pleadings and discovery in  
3 that matter, as well as the pleadings and discovery herein.

4           7.       Discovery in this action and the Port's lawsuit has disclosed that Titan Maritime  
5 LLC ("Titan"), the salvage contractor retained by the U.S. Government to deal with the  
6 M/V AJMAN 2 disaster, performed and billed for services involved in salvaging the vessel in  
7 August of 2004. Salvage expenses are typically insured under a vessel's hull and machinery  
8 insurance policy.

9           8.       Discovery in this action and the Port's lawsuit has disclosed that Titan performed  
10 services in August of 2004 for the removal of the wreck of the M/V AJMAN 2 from Family  
11 Beach in Apra Harbor, Guam. Navigators insured Marwan Shipping & Trading Co., LLC for  
12 "Liabilities for the Removal of a Wreck."

13           9.       All parties in the Port's lawsuit have agreed to a mediation of the dispute, to be  
14 held in London, England, during the week of December 3, 2007. Counsel are discussing  
15 resolving that matter, and it is possible that the case will be settled before the mediation convenes.  
16 Navigators, through their San Francisco-based legal counsel, have agreed to participate in that  
17 mediation.

18           10.      My clients are syndicates of Underwriters at Lloyds, London. From time to time  
19 the lead claims adjuster at the Gargrave Syndicate has had direct conversations about the  
20 AJMAN 2 claims with employees of Navigators in London. The Gargrave Syndicate was told on  
21 a number of occasions that Navigators would be willing to engage in a mediation of the  
22 AJMAN 2 disputes, but only if the Port's lawsuit and this action were mediated together, as a  
23 package.

24           11.      On November 2, this Court dismissed without prejudice the Amended Complaint  
25 in Intervention filed by Inchcape Shipping Services Guam LLC (hereinafter "Inchcape"). As of  
26 that date, Navigators was no longer a party to this lawsuit.

27           12.      On several occasions in late October and November 2007, I have had telephone  
28 conversations with Mr. Gibson, counsel for Navigators. During those conversations, Mr. Gibson

1 advised me that his client is no longer interested in mediating this action, because Navigators is  
2 no longer a party to this lawsuit, and therefore, in his view, is no longer involved.

3 13. It is my understanding that one of the reasons the parties originally agreed to set  
4 aside two days for the London mediation was that one day would be devoted to resolving the  
5 Port's lawsuit, and one day to resolving this lawsuit.

6 14. In my opinion, based on 30 years as a maritime lawyer, this action brought by the  
7 United States is readily susceptible of settlement. Counsel for defendants Marwan Shipping &  
8 Trading Co., Five Seas Shipping Co., LLC and Al-Buhaira have indicated to me that their clients  
9 are desirous of settling this lawsuit.

10 15. Mr. Gibson, counsel for Navigators, has indicated to me that he is prepared to  
11 travel to London to participate in one or two days of mediation during the week of December 3,  
12 2007, the dates currently agreed upon for mediation, although he has not yet agreed to mediate  
13 this dispute at the same time as the Port's lawsuit.

14 16. This application must be determined on an ex parte basis due to the time  
15 constraints imposed by the mediation schedule, and because Navigators would not stipulate to  
16 shorten the time period for Gargrave to file and the Court to hear its motion.

17 Sworn this 8th day of November, 2007, under penalty of perjury under the laws of the  
18 State of California and of the United States at San Francisco, California.

19 By:   
20 FORREST BOOTH

1 **CERTIFICATE OF SERVICE**

2 I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on  
3 November 14, 2007, I caused to be served a true and correct copy of the **CERTIFICATE**  
4 **OF FORREST BOOTH IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO**  
5 **SHORTEN TIME ON S.J. GARGRAVE'S MOTION FOR LEAVE TO FILE THIRD-**  
6 **PARTY COMPLAINT AGAINST NAVIGATORS PROTECTION & INDEMNITY** to the  
7 following:  
8

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[courtesy copy]

*Attorneys for Defendant Navigators Insurance Co., dba  
Navigators Protection & Indemnity*

6 Dated this 14 day of November, 2007.

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9   
DOROTHEA QUICHOCHO